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No. 83-65

IN THE
Supreme Court of the United States
OCTOBER TERM, 1983

LEASEWAY TRANSPORTATION CORP. AND
RAYMOND J. REHOR,
Petitioners,

v.

UNITED STATES OF AMERICA AND JAMES SIMEO,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF *AMICUS CURIAE* OF WHITE CONSOLIDATED INDUSTRIES, INC. IN SUPPORT OF PETITIONERS

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This brief in support of Petitioners' petition for a writ of certiorari is submitted with the written consent of counsel to all parties, copies of which have been filed with the Clerk of the Court.

INTEREST OF THE *AMICUS CURIAE*

White Consolidated Industries, Inc. is, like Leaseway Transportation Corp., a business concern utilizing Internal Audit Reports ("IARs") for purposes of internal policing. If the government's position is sustained without some restrictions as to a determination of relevancy of IARs to the tax return, internal controls will be weakened substantially.

SUMMARY OF ARGUMENT

Managements of many business firms utilize IARs for the purpose of policing their operations to ensure compliance with applicable laws and corporate policy. Making these IARs subject to discovery by an Internal Revenue Service ("IRS") administrative summons without a particularized showing of relevance would destroy their confidentiality and usefulness and thereby erode the public interest in promoting voluntary compliance with applicable laws and regulations. For this reason, the government's position should be rejected.

ARGUMENT

White Consolidated Industries, Inc., ("White") is a Delaware Corporation engaged in the manufacture and sale of major household electrical appliances and industrial machinery and equipment. These products are manufactured in the United States and sold both domestically and abroad.

At its forty plants in twenty states, White is subject to such federal laws as the Clean Air Act, the Clean Water Act, and the Occupational Safety & Health Act as well as to various similar state laws. There are many other federal and state laws affecting not only the operation of White's manufacturing facilities but also its relations with stockholders, customers, and local governments.

This case presents an issue that transcends the mere right of the IRS to discover IARs by administrative summons. Under our form of government, individuals and businesses endeavor to know the law as it applies to a given situation and, more importantly, to comply voluntarily with it. This condition is recognized by the IRS in its Statement of Procedural Rules, 26 C.F.R. § 601.103 (a), which reads in part: "The federal tax system is basically one of self-assessment. In general each taxpayer . . . is required to file a prescribed form of return which

shows the facts upon which tax liability may be determined and assessed."

An individual in that capacity knows what he has done. However, in a corporate business such as White's, responsibility must be delegated. For example, a directive may go from the executive office to a plant office requiring the installation of equipment to eliminate certain pollution. The IARs report on the progress of the executive directive and whether the desired objectives have been met. For this and other related reasons, certain employees audit the project and make confidential reports to management for its use in measuring compliance with the law.

Thus, IARs serve to promote the public interest in ensuring the corporation's compliance with the various statutes, rules, and regulations to which it is subject. The effect of the decision of the United States Court of Appeals for the Sixth Circuit in this case would be to permit virtually routine access to IARs by the IRS. Such access would result in a serious erosion of the usefulness of IARs to corporate management in monitoring corporate adherence to pertinent laws and regulations and thus would have a negative impact on the public interest in promoting voluntary compliance.

The summons authority of the IRS to examine corporate records is set forth in Section 7602 of the Internal Revenue Code, which provides in pertinent part:

> For the purpose of ascertaining the correctness of any return, . . . the Secretary or his delegate is authorized—
>
> (1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;
>
> (2) To summon . . . any officer or employee of [the taxpayer] . . . to appear before the Secretary or his delegate at a time and place named in the sum-

> mons and to produce such books, papers, records, or other data . . . as may be relevant or material to such inquiry.

The Code makes it plain, however, that the IRS summons power is not without limits. Thus, Section 7605(b) provides in part that "[n]o taxpayer shall be subjected to unnecessary examination or investigations."

The *amicus curiae* submits that this case requires a careful balancing of the needs and rights of the IRS to information relevant to a determination of tax liability with both (1) the needs and rights of the taxpayer to have and use confidential IARs in managing its business, and (2) the paramount public interest in promoting voluntary corporate compliance with state and federal laws and regulations applicable to American businesses. It is essential to the continuation of our self-assessment tax system and to voluntary compliance with the laws of the land that IARs not be subject to routine disclosure to the IRS pursuant to the summons power but rather that they be made available only upon a particularized showing of relevance by the IRS.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit should be granted.

Respectfully submitted,

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